IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2347 OF 2004

IN

SUIT NO.2412 OF 2004

John Peter Fernandes ... Plaintiff.

vs.

1.Saraswati Ramchandra Ghanate
and others. ... Defendants.

Mr.V.R.Tripathi. for Plaintiff.

Mr.M.C.Hegde, for Defendants 1 & 2.

Mr.A.M.Saroagi, for Defendants 3 & 4.

CORAM: D.K.DESHMUKH,J.

DATED: 4th March, 2005.

P.C.:-

1. This is a Notice of Motion taken out by the plaintiff. The plaintiff has filed the suit for specific performance of the agreement dated 6th October,2003. The case of the plaintiff is that an agreement for purchase of the property was entered into by the defendants for total consideration of Rs.35,00,000/- (Rupees Thirty Five lakhs only). The amount of Rs.10,00,000/- (Rupees Ten lakhs only) was paid by cash on 10th December,2002, 26th December,2002, 27th April,2003, 2nd September,2003 and 27th September,2003. The balance amount of Rs.25,00,000/- (Rupees Twenty five lakhs only) was to be paid subsequently. The agreement was entered into subsequent to these receipts, which shows that the entire amount of Rs.35,00,000/- has already been paid. The agreement also shows that the possession of the property has already been handed over. However, admittedly, even according to the plaintiff, neither the entire amount of Rs.35,00,000/- was paid nor the possession was handed over. The defendant no.2 is disputing his signatures on the receipts and he states that the agreement was a nominal transaction. As I find that the material recitals in the agreement are at variance with the case

of the plaintiff, it cannot be said that the plaintiff has a prima facie case for any interim reliefs. Since, the plaintiff does not have a prima facie case in his favour as above, there is no room to grant any interim order to the plaintiff.

Notice of Motion is disposed of.

2. At this stage, a request is made for stay of the order. I find no substance in staying the order. The request is rejected.

4.3.2005 ---